IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2798 OF 1987

Rama Vithal Kalantre
since deceased by his heirs
and legal representatives:

1. Banabai Rama Kalantre & Ors. ..Petitioners
Versus
Pandurang Hindurao Patil ....Respondents.

Mr.R.N.Kachare for petitioners
Mr.S.G.Karandikar for respondent.

CORAM : A.M.KHANWILKAR, J.

DATE : AUGUST 27, 2004.

ORAL JUDGEMENT:-

1. This writ petition takes exception to the judgement and order passed by the Maharashtra Revenue Tribunal, Pune dated February 11, 1985 in

Revision No.MRT-NS-IV-1/80 (TNC.B.112/80) Pune. The property in question is eastern portion of S.No.698 admeasuring 32 gunthas situated at village Kumbhargaon, Taluka Patan, Dist. Satara out of total area of 1 acre and 32 gunthas. It is the case of petitioners that the grand father of petitioner Nos. 2 and 3 Vithu Kalantre was permanent tenant in respect of the suit land. Mutation entry recording this fact came to be noted in the village record as back as on 17th October 1949. After the death of original tenant his son Rama continued to remain in possession of the suit land. It is stated that the land was originally owned by the predecessor of respondent which was however, transferred in favour of Pandurang as guardian during the lifetime of Hindurao who was minor at the relevant time. Mutation entry recording this fact is noted on 23rd November 1956 being entry No.7976. It is not relevant for our purpose to examine the effect of such transfer. Suffice it to observe

that as the predecessor of the petitioners were in lawful cultivation of the suit land on the tillers day i.e. 1st April 1957, proceedings under section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 were commenced. In the said proceedings, the father of the predecessor of the respondent Hindurao appeared and made statement accepting the fact that the predecessor of petitioners was protected tenant and which fact was fortified by the mutation entry No.6467 effected in the year 1949. However, the said proceedings under section 32(G) came to be dropped on the reasoning that the predecessor of the respondent was minor at the relevant time. Be that as it may, later on in the year 1977, respondent Pandurang instituted application under section 70(b) of the Act for a negative declaration that the predecessor of the petitioners Rama was not the tenant in respect of suit land. That application was numbered as Tenancy case No.1/77. The Tahsildar before whom

the case was contested, by his decision dated 30th November 1978 allowed the application and declared that the predecessor of petitioners was not in possession of the suit land as tenant. The Tahsildar, although adverted to the mutation entry No.6467 as well as the statement of Hindurao, preferred to decide the issue against petitioners and in favour of respondents on the reasoning that there was no written lease deed executed between the parties and that the petitioners failed to adduce any positive evidence in the shape of lease deed, rent receipt or to establish the factum of oral lease in respect of the suit land in their favour. The Tahsildar instead held that on considering oral evidence adduced by the respondents, the petitioners had failed to satisfactorily prove that they were tenants in respect of the suit land. Against this decision the matter was carried in appeal before the Assistant Collector being Appeal No.TNC/Appeal/16/79. The appellate

authority was, however, pleased to overturn the finding of fact reached by the Tahsildar. The appellate authority instead, relying upon the mutation entry in the 7/12 extract being entry No.6467, which prevailed since 1949, indicating that the predecessor of the petitioners was protected tenant in respect of the suit land and which entry remained unchallenged besides the oral statement of respondents predecessor viz., Hindurao, the father of Pandurang accepting the claim of the petitioners to be tenants in respect of suit land. The appellate authority made further observations with regard to the manner of transfer in favour of Pandurang. In the result, the appeal came to be allowed and the order passed by the Tahsildar was set aside and instead the petitioners were declared to be the tenant in respect of the suit land. Against this decision the matter was carried in revision at the instance of the respondents before Maharashtra Revenue Tribunal. The Tribunal on the other hand

re-appreciated the evidence on record and chose to discard the subject mutation entry No.6467 as well as the statement of Hindurao recorded in section 32(G) proceedings, accepting the claim of the petitioner therein in respect of the suit land. The revisional authority preferred to affirm the view expressed by the first authority and essentially relied upon oral evidence adduced on behalf of the respondents to support their claim that the petitioners were not in lawful cultivation of the suit land. It is this decision which is the subject matter of challenge in the present petition.

2. Learned Counsel for the petitioner submits that the Tribunal has clearly exceeded its jurisdiction in overturning finding of fact reached by the authority which was impermissible in view of the decision of the Apex Court reported in A.I.R. 1974 S.C. 2051 in the case of Maruti Bala Raut. It is further submitted

that the revisional authority could not have discarded the documentary evidence in preference to the oral evidence given by the respondents to support the claim that the petitioners were not in lawful cultivation. The learned Counsel submits that the revisional authority has committed manifest error in re-appreciating evidence on record to take a different view of the matter.

3. On the other hand, the learned Counsel for the respondents submits that no fault can be found with the conclusion reached by the revisional authority which in turn has affirmed the view taken by first authority. The learned Counsel has placed reliance on mutation entry No.7594 to contend that the mutation entry noted, being Entry No.6467 could not have been recorded in view of the exposition of the Apex Court in the case of S.N.Kamble Vs. The Sholapur Borough Municipality and Anr. reported in A.I.R. 1966

S.C. 538. It is contended that after the introduction of the present Act of 1948 which came into effect from 28th December 1948 no new protected tenancy could be created and as the mutation entry No.6467 has been recorded much thereafter in the year 1949, the same is illegal and ought to be ignored. It is further submitted that in any case, the said mutation entry has undergone change by bracketing the name of original tenant Vithu Gopal and instead the heir of the said tenant has been brought on record vide mutation entry No.7594. It is contended that as the original entry has undergone change it pre-supposes that the petitioners predecessor was not in lawful cultivation on the relevant date when the landlord had become major which will have to be treated as tillers day. It is further submitted that the oral evidence adduced on behalf of the respondents would also establish the position that the predecessor of the petitioner was not cultivating the suit land or

were in possession thereof as is claimed and that evidence cannot be discarded as it is coming from independent persons.

4. Having considered rival submissions, I have no hesitation in accepting the submission canvassed on behalf of the petitioners that the Tribunal has exceeded its revisional jurisdiction as provided for under section 76 of the Act. The scope of interference in revisional jurisdiction is circumscribed by the rigours of section 76 of the Act. The legal position has been expounded in the case of Maruti Bala Raut (supra). In the present case, the tribunal has re-appreciated the entire evidence on record to overturn the finding of fact reached by the appellate authority. The revisional authority has interfered not because the finding of fact recorded by the appellate authority was error apparent on the face of record or was manifestly wrong; but on fair reading of the judgement of the Tribunal, the

approach of the Tribunal appears to be that since another view was possible, it would prefer the view taken by the first authority. This is impermissible.

5. Insofar as, the merits are concerned the fact that mutation entry No.6467 was recorded which indicates that the predecessor of the petitioner was noted as protected tenant in respect of the suit land is not in dispute. Assuming that the respondents are justified in contending, by placing reliance on the decision of the Apex Court in the case of Kamble (supra), that no protected tenancy could be created after the coming into force of the new Act in 1948, even so, the fact remains that the lawful possession of the petitioners' predecessor is not in dispute. The said entry in any case would be relevant to assume that the predecessor of petitioners was in lawful cultivation of the suit land. The fact that the predecessor of

petitioners was in lawful cultivation of the suit land is also accepted by the father of Pandurang in proceedings under section 32(G) of the Act. Neither the said mutation entry 6467 has been challenged at any point of time nor the statement of Hindurao has been withdrawn. Indeed, the respondents would contend that the statement of Hindurao cannot be the basis to answer the issue in favour of the petitioners, because Hindurao was known to a drunkard. As mentioned earlier, no attempt has been made to resile from the statement made by Hindurao either in the proceedings under section 32(G) or even thereafter. Going by the documentary evidence in the shape of mutation entry 6467, the authorities ought to have assumed the factum of lawful cultivation of the suit land by the petitioners' predecessor on the relevant date. If that assumption is available, then by virtue of section 4 of the Act, the predecessor of the petitioner will have to be treated as deemed

tenant. It is well settled that mere absence of a written lease deed or rent receipt cannot be the basis to answer the issue against the person in lawful cultivation, who satisfies the status of deemed tenant by operation of law (See Kishan Ramchandra Kumbhar, reported in 2004 (1) Mah.L.J. 285 paras 10 and 11). To get over this position, an attempt was made on behalf of the respondents to contend that the name of original tenant has been bracketed by subsequent mutation entry 7594. This submission clearly overlooks that the name of original tenant came to be bracketed in the year 1955, after the death of the original tenant and instead the names of his heir and legal representative was brought on record. That would mean that the heir and legal representatives of deceased tenant came in lawful cultivation of the suit land. The fact remains that even the subsequent mutation entry has not been challenged at any point of time. On the other hand, the said entry has also been certified, which once

again would re-enforce the stand of the petitioners that their predecessor was in lawful cultivation of the suit land on the relevant date. The petitioners in support of their claim that their predecessor was in lawful cultivation of the suit land has in addition relied upon the oral evidence of the occupiers/ owners of neighbouring lands so also the respondents have relied upon the oral evidence of occupiers/ owners of other neighbouring lands to contend that the petitioners were not in possession of the suit land at all. The oral evidence as adduced on behalf of the petitioners has been accepted by final fact finding court. Whereas, the revisional authority, while overturning the findings of fact reached by the lower court preferred to rely upon the oral evidence adduced on behalf of the respondents. There is no attempt by the revisional authority to analyse the oral evidence of the petitioners or to discard the same on legitimate reasons and more

so, when the final fact finding authority, after appreciating the evidence had taken a particular view of that oral evidence, it was not open to the revisional authority to take a different view merely because, another view was also possible.

6. Taking overall view of the matter to my mind, revisional authority has clearly exceeded its jurisdiction and also has committed manifest error in interfering with the conclusion reached by the appellate authority on the factum that the petitioners predecessor was in lawful cultivation of the suit land which is substantiated by the documentary as well as oral evidence. Accordingly, the petition ought to succeeded and the impugned decision will have to be set aside and instead the decision taken by the Assistant Collector, Satara Division in TNC Appeal No.16 of 1979 will have to be restored. Rule is, therefore, made absolute on the above terms with no orders as to costs.

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